

with the provisions of §§ 40.311 and 40.313.

(72 Stat. 1423, as amended; 26 U.S.C. 5741)

[T.D. 6871, 31 FR 37, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-232, 51 FR 28082, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986]

§ 40.254 Receipt into factory.

A manufacturer of tobacco products may receive in bond into his factory tobacco products and may also receive into his factory tobacco products on which the tax has been determined (including products on which the tax has been paid). Cigars and cigarettes on which the tax has been determined which are so received shall be segregated and identified as products on which the tax has been determined. If tax determined products received into the factory are so handled that they cannot be identified both physically and in the records as tax determined products they shall be accounted for as returned to bond and upon subsequent removal shall be tax determined. Where returned tax determined tobacco products are to be repackaged without being returned to bond the manufacturer shall make application for authorization to do so to the appropriate TTB officer in accordance with § 40.217. Where the manufacturer intends to file claim for credit, allowance, or refund of tax on tax determined products he shall comply with the provisions of §§ 40.311 and 40.313.

[T.D. 6871, 31 FR 37, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-232, 51 FR 28082, Aug. 5, 1986; T.D. ATF-243, 52 FR 43194, Dec. 1, 1986]

§ 40.255 Shortages and overages in inventory.

Whenever a manufacturer of tobacco products makes a physical inventory of packaged tobacco products in bond, either as part of normal operations or when required by an appropriate TTB officer, and such inventory discloses a shortage or overage in such products by kind as recorded and reported (*i.e.*, small cigars, large cigars, chewing tobacco, snuff, pipe tobacco, or roll-your-own tobacco), the manufacturer shall enter such shortage or overage in the

records required by § 40.183. Shortages or overages in inventories made at different times may not be used to offset each other, but shall be recorded and reported separately. Unless the manufacturer establishes that a shortage was not caused by a removal subject to the tax the manufacturer shall determine the tax on any shortage, make an adjustment in Schedule A of his next semimonthly tax return and pay the tax thereon. If, after paying the tax on a shortage, the manufacturer satisfactorily establishes that the shortage was not caused by a removal subject to tax, then such payment would be an overpayment of tax which the manufacturer may recover as provided in § 40.286. Where the manufacturer can establish prior to paying the tax on a shortage, that the shortage was not the result of a removal subject to tax he shall submit an explanation of such shortage with his report for the month in which the shortage was disclosed and, if appropriate, he may file claim for remission of tax liability as provided in § 40.287. When an overage is disclosed which the manufacturer can explain, he shall include such explanation in his monthly report and refund of any overpayment may be recovered as provided in § 40.286. Whenever a physical inventory discloses a shortage or overage of tobacco products which have not been packaged the manufacturer shall appropriately enter such shortage or overage in his records and shall, at the time required by the appropriate TTB officer, furnish an explanation in the form of a claim for remission of tax liability as provided in § 40.287. The manufacturer shall pay the tax on any shortage or portion thereof for which he is unable to furnish an explanation acceptable to the appropriate TTB officer.

[T.D. ATF-232, 51 FR 28082, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986, as amended by T.D. ATF-289, 54 FR 48840, Nov. 27, 1989; T.D. ATF-424, 64 FR 71931, Dec. 22, 1999]

§ 40.256 Minimum manufacturing and activity requirements.

The minimum manufacturing and activity requirement prescribed in § 40.61(c) of this part is a continuing condition of a manufacturer's permit,

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that is, a permit to manufacture tobacco products is conditioned upon a person's principal business activity being the manufacture of tobacco products. A permit may be suspended, and subsequently revoked, if the person's principal business activity under such permit is to receive or transfer tobacco products in bond, or if the person has no activity under such permit for a period of one year. As a minimum activity requirement, the quantity of tobacco products manufactured under the permit must be equivalent to, or exceed, the quantity transferred or received in bond under the permit.

[T.D. TTB-78, 74 FR 29410, June 22, 2009, as amended by T.D. TTB-80, 74 FR 37552, July 29, 2009; T.D. TTB-104, 77 FR 37303, June 21, 2012]

§ 40.257 Processed tobacco.

A manufacturer of tobacco products may be required to obtain authorization from the appropriate TTB officer with regard to the activities involving processed tobacco. See § 40.72. Such manufacturers also must maintain records and may be required to submit reports regarding such activities. See §§ 40.182 and 40.202.

[T.D. TTB-78, 74 FR 29410, June 22, 2009]

Subpart I—Claims by Manufacturers

GENERAL

§ 40.281 Abatement of assessment.

A claim for abatement of the unpaid portion of the assessment of any tax on tobacco products or any liability in respect thereof, may be allowed to the extent that such assessment is excessive in amount, is assessed after expiration of the applicable period of limitation, or is erroneously or illegally assessed. Any claim under this section shall be prepared on TTB F 5620.8, in duplicate, and shall set forth the particulars under which the claim is filed. The original of the claim, accompanied by such evidence as is necessary to establish to the satisfaction of the appropriate TTB officer that the claim is valid, shall be filed with the appropriate TTB officer, and the duplicate of

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the claim shall be retained by the manufacturer.

(68A Stat. 792; 26 U.S.C. 6404)

[T.D. 6871, 31 FR 38, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-232, 51 FR 28083, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986; T.D. ATF-251, 52 FR 19340, May 22, 1987]

§ 40.282 Allowance of tax.

Relief from the payment of tax on tobacco products may be extended to a manufacturer by allowance of the tax where the tobacco products after removal from the factory upon determination of tax and prior to the payment of such tax, are lost (otherwise than by theft) or destroyed, by fire, casualty, or act of God, while in the possession or ownership of the manufacturer who removed such products, or are withdrawn by him from the market. Any claim for allowance under this section shall be filed on TTB F 5620.8, in duplicate, with the appropriate TTB officer, and shall show the date the tobacco products were removed from the factory. A claim relating to products lost or destroyed shall be supported as prescribed in § 40.301. In the case of a claim relating to tobacco products withdrawn from the market the schedule prescribed in § 40.311 shall be filed with the appropriate TTB officer. The manufacturer may not anticipate allowance of his claim by making the adjusting entry in a tax return pending consideration and action on the claim. Tobacco products to which such a claim relates must be shown as removed on determination of tax in the return covering the period during which such products were so removed. Upon action on the claim by the appropriate TTB officer he will return the copy of TTB F 5620.8 to the manufacturer as notice of such action, which copy, with the copy of any verified supporting schedules, shall be retained by the manufacturer. When such notification of allowance of the claim or any part thereof is received prior to the time the return covering the tax on the tobacco products to which the claim relates is to be filed, the manufacturer may make an adjusting entry and explanatory statement in that tax return. Where the notice of allowance is received after the filing of the return